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6 Attorneys for Defendant  
THE VONS COMPANIES, INC.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

11 BARBARA HUBBARD, ) Case No.: '08 CV 0229 DMS (POR)  
12 Plaintiff, )  
13 vs. )  
14 THE VONS COMPANIES, INC., dba VONS )  
#3063, )  
15 )  
16 Defendant. )  
17 )

1           Defendant The Vons Companies, Inc. (“Vons”) (incorrectly identified by Plaintiff as  
2 “The Vons Companies, Inc. dba Vons #3063”), for itself and no other defendants, responds to  
3 the complaint of Barbara Hubbard (“Plaintiff”) as follows:

4           1.       Vons denies each and every allegation of this paragraph.

5           2.       Vons denies each and every allegation of this paragraph, and Vons also denies  
6 that Plaintiff is entitled to any of the relief sought.

7           3.       Vons states that the allegations of this paragraph are legal contentions that do  
8 not require admission or denial.

9           4.       Vons states that the allegations of this paragraph are legal contentions that do  
10 not require admission or denial.

11          5.       Vons states that the allegations of this paragraph are legal contentions that do  
12 not require admission or denial.

13          6.       Vons admits that the Vons store and the parking lot and common areas  
14 identified in Plaintiff’s complaint are located at 870 Third Avenue in Chula Vista, California,  
15 and that this is within the Southern District of California. Except as so admitted, the  
16 allegations of this paragraph are legal contentions that do not require admission or denial.

17          7.       Vons admits that it is a Michigan corporation and that Vons operates the Vons  
18 store at 870 Third Avenue in Chula Vista, California identified in Plaintiff’s complaint.  
19 Except as so admitted, Vons denies each and every allegation of this paragraph.

20          8.       Vons is without knowledge or information sufficient to form a belief as to the  
21 allegations of this paragraph, and on that basis Vons denies each and every allegation of this  
22 paragraph.

23          9.       Vons admits that it is the operator of the Vons store at 870 Third Avenue in  
24 Chula Vista, California. Except as so admitted, the allegations of this paragraph are legal  
25 contentions that do not require admission or denial.

26          10.      Vons denies each and every allegation of this paragraph.

27          11.      Vons denies each and every allegation of this paragraph.

28          12.      Vons denies each and every allegation of this paragraph.

- 1        13. Vons denies each and every allegation of this paragraph.
- 2        14. Vons denies each and every allegation of this paragraph.
- 3        15. Vons denies each and every allegation of this paragraph.
- 4        16. Vons incorporates herein its responses to paragraphs 1-15.
- 5        17. Vons states that the allegations of this paragraph are legal contentions that do  
6 not require admission or denial.
- 7        18. Vons denies each and every allegation of this paragraph.
- 8        19. Vons states that the allegations of this paragraph are legal contentions that do  
9 not require admission or denial.
- 10      20. Vons states that the allegations of this paragraph are legal contentions that do  
11 not require admission or denial.
- 12      21. Vons denies each and every allegation of this paragraph.
- 13      22. Vons denies each and every allegation of this paragraph.
- 14      23. Vons states that the allegations of this paragraph are legal contentions that do  
15 not require admission or denial.
- 16      24. Vons states that the allegations of this paragraph are legal contentions that do  
17 not require admission or denial.
- 18      25. Vons denies each and every allegation of this paragraph.
- 19      26. Vons states that the allegations of this paragraph are legal contentions that do  
20 not require admission or denial.
- 21      27. Vons states that the allegations of this paragraph are legal contentions that do  
22 not require admission or denial.
- 23      28. Vons denies each and every allegation of this paragraph.
- 24      29. Vons states that the allegations of this paragraph are legal contentions that do  
25 not require admission or denial.
- 26      30. Vons denies each and every allegation of this paragraph.
- 27      31. Vons denies each and every allegation of this paragraph, and Vons also denies  
28 that Plaintiff is entitled to any of the relief sought.

1       32. Vons denies each and every allegation of this paragraph, and Vons also denies  
2 that Plaintiff is entitled to any of the relief sought.

3       33. Vons incorporates herein its responses to paragraphs 1-32.

4       34. Vons states that the allegations of this paragraph are legal contentions that do  
5 not require admission or denial.

6       35. Vons states that the allegations of this paragraph are legal contentions that do  
7 not require admission or denial.

8       36. Vons states that the allegations of this paragraph are legal contentions that do  
9 not require admission or denial.

10      37. Vons denies each and every allegation of this paragraph.

11      38. Vons denies each and every allegation of this paragraph, and Vons also denies  
12 that Plaintiff is entitled to any of the relief sought.

13      39. Vons denies each and every allegation of this paragraph, and Vons also denies  
14 that Plaintiff is entitled to any of the relief sought.

15      40. Vons incorporates herein its responses to paragraphs 1-39.

16      41. Vons states that the allegations of this paragraph are legal contentions that do  
17 not require admission or denial.

18      42. Vons states that the allegations of this paragraph are legal contentions that do  
19 not require admission or denial.

20      43. Vons states that the allegations of this paragraph are legal contentions that do  
21 not require admission or denial.

22      44. Vons denies each and every allegation of this paragraph.

23      45. Vons denies each and every allegation of this paragraph.

24      46. Vons denies each and every allegation of this paragraph, and Vons also denies  
25 that Plaintiff is entitled to any of the relief sought.

26      47. Vons denies each and every allegation of this paragraph, and Vons also denies  
27 that Plaintiff is entitled to any of the relief sought.

28      48. Vons incorporates herein its responses to paragraphs 1-47.

49. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

50. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

51. Vons states that the allegations of this paragraph are legal contentions that do not require admission or denial.

52. Vons denies each and every allegation of this paragraph, and Vons also denies that Plaintiff is entitled to any of the relief sought.

## AFFIRMATIVE DEFENSES

Vons currently has insufficient information available as to whether Vons has additional, as yet unstated, affirmative defenses beyond those stated hereinbelow. Vons reserves the right to assert additional affirmative defenses in the event that investigation or discovery indicates that such defenses would be appropriate.

## **FIRST AFFIRMATIVE DEFENSE**

The complaint, and each and every purported cause of action therein, fail to state facts sufficient to constitute a cause of action against Vons.

## **SECOND AFFIRMATIVE DEFENSE**

Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are barred, in whole or in part, by applicable statutes of limitation, including but not limited to California Code of Civil Procedure sections 337, 338, 339, 340, and 343.

### **THIRD AFFIRMATIVE DEFENSE**

Without admitting the allegations of the complaint, Vons alleges that any and all architectural barriers at this Vons store and the parking and common areas on the same parcel have been removed, and that goods, services, facilities, privileges, advantages and/or accommodations are provided on an equal and unrestricted basis.

## **FOURTH AFFIRMATIVE DEFENSE**

If Plaintiff suffered any loss or damage, such loss or damage was proximately caused in whole or in part by Plaintiff's own failure to mitigate any alleged damages. Therefore,

1 Plaintiff's claims must be reduced, diminished or defeated by such amounts as should have  
2 been mitigated.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 The alleged conduct of Vons was excused, justified and/or privileged.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 The damages allegedly suffered by Plaintiff, if any, are the direct and proximate result  
7 of the acts or omissions of other persons, and not of Vons.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Plaintiff failed to exercise ordinary care, caution or prudence to avoid the injuries and  
10 damages alleged, if any. Therefore, any resulting damages to Plaintiff were proximately  
11 caused by Plaintiff's own conduct, and any recovery by Plaintiff must be reduced or barred  
12 entirely by the proportion of damages caused by Plaintiff's own conduct.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Vons did not authorize, ratify, acquiesce in or have knowledge of any action by other  
15 persons constituting discrimination as alleged by Plaintiff.

16 **NINTH AFFIRMATIVE DEFENSE**

17 Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are  
18 barred by the doctrine of unclean hands.

19 **TENTH AFFIRMATIVE DEFENSE**

20 Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are  
21 barred by the doctrine of laches.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are  
24 barred by the doctrine of waiver.

25 **TWELFTH AFFIRMATIVE DEFENSE**

26 Vons is informed and believes, and on that basis alleges, that Plaintiff's claims are  
27 barred by the doctrine of estoppel.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries, if any, took place upon and were caused by facilities and programs not under the control or ownership of Vons, but under the control or ownership of other persons.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

Vons has taken all steps readily achievable to comply with the ADA and with state laws of comparable effect to remove any barriers to access, to make the subject facilities, programs and services accessible, or to provide reasonable and satisfactory alternatives.

## **FIFTEENTH AFFIRMATIVE DEFENSE**

Vons is informed and believes, and on that basis alleges, that Plaintiff lacks standing to sue Vons on one or more of the claims for relief alleged in the complaint.

## **PRAAYER FOR RELIEF**

WHEREFORE, Vons prays for judgment against Plaintiff as follows:

- 14           1. That Plaintiff takes nothing whatsoever by way of the complaint;

15           2. For an award of costs and attorneys' fees to the fullest extent allowed by

16 applicable law; and

17           3. For such other and further relief as the Court deems just and proper.

18 | Dated: March 7, 2008

MAZZARELLA ■ CALDARELLI LLP

By: /s/ Michael D. Fabiano  
MICHAEL D. FABIANO  
Attorneys for Defendant  
THE VONS COMPANIES, INC.